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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,718	05/14/2001	Radislav Alexandrovich Potyrailo	RD-28,013	8673

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EXAMINER
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VANORE, DAVID A

ART UNIT	PAPER NUMBER
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2881

DATE MAILED: 07/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/854,718

Applicant(s)

POTYRAILO ET AL.

Examiner

David A Vanore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-45 rejected under 35 U.S.C. 102(a) as being clearly anticipated by Nielsen.

Nielsen teaches a device and method for optical analysis of a combinatorial array comprising the following in regards to claims 1-4, 7-9, 11-12, 15-28, and 31-43:

1) A combinatorial array having a surface with a plurality of predefined regions (Col. 6 Line 44-Col. 7 Line 14) comprising a plurality of sample or reference regions measured simultaneously (Col. 10 Lines 64-68), where the regions may be concave or convex (dimpled or beaded), the array may comprise a substrate with a deposited coating (Col. 7 Lines 33-43) where the substrate may be comprised of glass, silicon, metals, ceramics (Col. 7 Line 64) and the coating may be transparent, opaque, organic, or inorganic (Col. 7 Lines 45-50), since any material.

2) A radiation source for exposing the array to incident radiation of between  $10^{-14}$  meters and  $10^4$  meters. (Col. 7 Lines 15-20).

3) A detector in the form of a CCD for collecting the radiation reflected from the array (Col. 11 Lines 30-40) where spatial filters compensate for the curvature or structures affecting the focus of the excitation radiation and an optical train filters selected incident radiation (Col. 11 Line 8-15).

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4) A means for applying a test to each region of the array, in the instant case, Nielsen teaches a means for controlling the temperature of the environment (See Example 1 on Col. 11)

5) A computer to control the system and determine the performance of each test region (Col. 5 Lines 22-45).

Regarding claims 13-14, 29-30, and 44-45, Nielsen also teaches the use of a luminescent dye compound in each of the predefined regions (See General Overview starting on Column 7 Line 44).

Regarding claim 10, Nielsen teaches that the substrate may be a flat polymer thin film and defines a substrate any material having a rigid or semi-rigid surface (Col. 6 Lines 44-60 and Col. 7 Lines 45-65).

Regarding claims, 5-6, 26-27, 35-36, Nielsen teaches that the substrate or coating disclosed does not interfere, or inherently luminesce, during the analysis process. This teaching by Nielsen (Col. 6 Lines 9-17), while away from the embodiment claimed by the applicant, is valid under 35 USC 102(a) because it is still a teaching of the claimed subject matter.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Vanore whose telephone number is 703-306-0246. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Lee can be reached on 703-308-4116. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

dav  
June 25, 2003

  
JOHN R. LEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800